



The Tax Abatement Process

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Today's Class Will Cover

- How the taxpayer and the designating body establish an abatement
- How the taxpayer claims the deduction
- How the assessor reviews the deduction
- Common problems
- Problem solving options for consideration



Resource Information

- Indiana Code – IC 6-1.1-12.1
- Indiana Administrative Code – 50 IAC 10
- Forms
- DLGF Website – www.in.gov/dlgf



Basic Definitions

- Personal property abatement
- A property tax deduction from the assessed valuation granted by a designating body for the installation of qualifying abatable equipment in an Economic Revitalization Area (ERA).



Basic Definitions

- Real property abatement
 - A property tax deduction from the assessed valuation granted by the designating body for the construction of a new structure or a rehabilitation of property in an ERA. (It does not include land.)



Basic Definitions

- Economic Revitalization Area (ERA)
- An area that is within the corporate limits of a city, town, or county that has become undesirable for, or impossible of, normal development and occupancy.
- It is a legal description for a piece of real estate.
- If ownership transfers, the designation transfers with the property.



Basic Definitions

- Designating body
 - Also called a “governing body”
 - For a county without a consolidated city, the designating body is the fiscal body of the city, town, or county.
 - For a consolidated city, the designating body is the metropolitan redevelopment commission.



Frequently Asked Questions

Question: If a city council denies an abatement request, can the county council override them?

Answer: No, the county council is not the fiscal body of that jurisdiction.

IC 6-1.1-12.1-1 (D) (7)

IC 6-1.1-12.1-2 (a)



50 IAC 10-1-2

- “Installed” defined
 - Section 2(a) “Installed” means that personal property:
 - (1) has been completely assembled;
 - (2) is completely functional for the purpose for which it was acquired; and
 - (3) is placed in service.



50 IAC 10-1-2 (cont'd)

- “Installed” defined
 - Section 2(b):
 - When different pieces of personal property are linked together as part of an integrated production process, personal property will not be considered installed until the integrated production process is completely functional and is placed in service.



Frequently Asked Questions

Question: How would an assessor know when the equipment is actually installed?

Answer: Federal guidelines for depreciation state that depreciation cannot be claimed until the property is placed in service so their books and records will reflect the date installed.



Frequently Asked Questions

Question: So if the equipment is present at the facility on the assessment date and not installed, how is that situation handled?

Answer: 50 IAC 4.2-6-1 classifies this equipment as “Construction In Process” (CIP) and assesses it at 10% of cost with no abatement deduction allowed on it. (In most cases, the abatement will begin the following year.)



Types of Abatements

- A) Manufacturing
- B) Research & Development
- C) Information Technology
- D) Logistical Distribution



50 IAC 10-1-3

- “New Manufacturing Equipment” defined
 - (a) “New manufacturing equipment” has the meaning found in IC 6-1.1-12.1-1(3). In order to be new manufacturing equipment, personal property must be qualified machinery and equipment as defined in section 6 of this rule.
 - (b) New manufacturing equipment includes new equipment and used equipment brought into Indiana from outside of Indiana.



50 IAC 10-1-6

- “Qualified machinery and equipment” defined
 - Section 6(a):
 - Direct Production of
 - Manufacturing of
 - Fabricating of
 - Assembly of
 - Extracting of



50 IAC 10-1-6 (cont'd)

- “Qualified machinery and equipment” defined
 - Section 6(a):
 - Mining of
 - Processing of
 - Refining of
 - Finishing of other tangible personal property



50 IAC 10-1-6 (cont'd)

- “Qualified machinery and equipment” defined
 - Personal property will be qualified machinery and equipment when it is used within the process that chronologically begins with:
 - Material handling equipment that carries the raw material from its on-site storage location to the first production step.
 - Example: The crane that lifts the coil of steel to the press that stamps out a car fender.



50 IAC 10-1-6 (cont'd)

- “Qualified machinery and equipment” defined
 - Ends with the material handling equipment that carries or moves the finished product from its final machine or production step to the in-plant finished good storage site.
 - Example: The fork lift that moves the finished product from the production line to a shelf in the finished goods warehouse.



Assets Not Qualifying

- Pollution Control Equipment
 - Why? Not manufacturing equipment, plus it's 100% exempt every year.
- Office Equipment
 - Why? Not manufacturing equipment.
- Semi Tractors & Trailers
 - Why? They are subject to excise tax.



Classification of Property

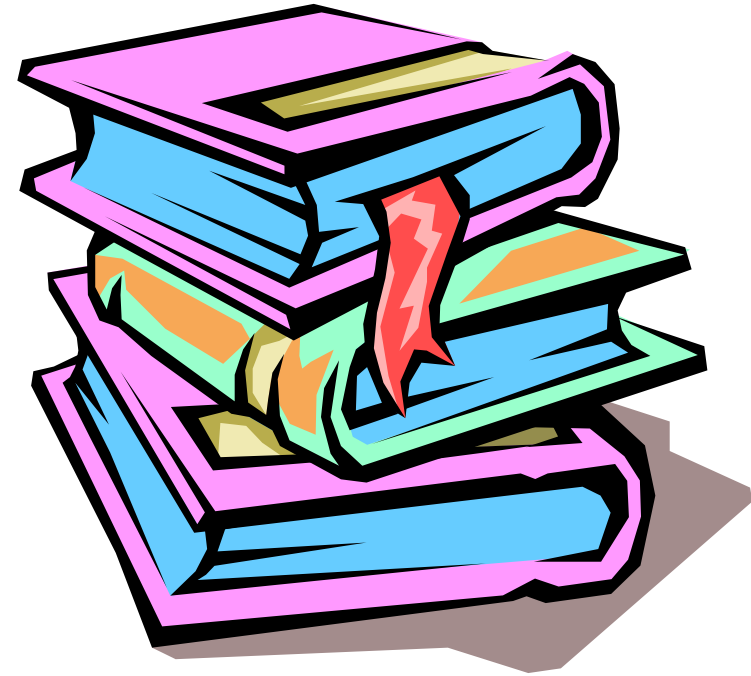
So what is personal property and what is real property?

It is important to understand that before you can claim or verify the tax abatement deduction since it must be determined that a particular asset is to be assessed as personal or real property.



Real vs. Personal Property

- Personal Property Rule
 - 50 IAC 4.2-4-10
- “2012 Real Property Guidelines”
 - Chapter 1, Table 1-1





Real vs. Personal Property Examples

- Boilers:
 - Manufacturing process – Personal
 - Building service – Real
- Foundations for machinery & equipment – Personal
- Gas lines for equipment or processing – Personal



Real vs. Personal Property Examples

- Lighting:
 - Yard – Personal
 - Special purpose, inside – Personal
- Piping used in a process – Personal
- Pits for equipment or processing – Personal
- Power lines and auxiliary equipment – Personal



Cost Per Books & Records

50 IAC 4-2-4-2 states that the cost of this equipment includes: the purchase price of the equipment, freight, installation costs, foundations, wiring, air lines, water lines, etc. Remember the equipment must be installed and placed in service so these expenses are necessary to make that happen.



Steps In Establishing An Economic Revitalization Area



Establishing An ERA

- Designating body can designate an ERA on its own or upon application of a property owner.
- If designating body works on its own, no Statement of Benefits (SB-1/PP) is necessary for a preliminary designation; however one will be required later when finalizing the details for a new business that desires to locate there.
- If the property owner asks for an ERA designation, a Form SB-1/PP must be filed.



Statement of Benefits – Personal Property (Form SB-1/PP) (cont'd)

- The form on which the property owner submits information regarding the installation of new manufacturing, research and development, logistical distribution, or information technology equipment to the designating body.
- This form should be incorporated into the designation process.



Statement of Benefits – Personal Property (Form SB-1/PP) (cont'd)

- The Form SB-1/PP provides information on the proposed project and is an estimate of costs, jobs created, etc. This is done before the project begins.
- A taxpayer could have a single Form SB-1 or multiple Form SB-1's which could cover several projects over a number of years.



Statement of Benefits – Personal Property (Form SB-1/PP) (cont'd)

- The reason why the Form SB-1/PP is so important is because the designating body must determine if the totality of the benefits (number of jobs, salaries, & other benefits) is sufficient to justify the deduction.

IC 6-1.1-12.1-3



Statement of Benefits – Personal Property (Form SB-1/PP) (cont'd)

- The taxpayer must attach an approved copy of Form SB-1/PP to his personal property return.
- Page 1 is completed and signed by the taxpayer.
- Page 2 is completed and signed by the designating body. It sets the limits and guidelines for the abatement.



Abatement Deduction Schedule – IC 6-1.1-12.1-17

Sec. 17. (a) A designating body may provide to a business that is established in or relocated to a revitalization area and that receives a deduction under section 4 or 4.5 of this chapter an abatement schedule based on the following factors:



Abatement Deduction Schedule – IC 6-1.1-12.1-17

- (1) The total amount of the taxpayer's investment in real and personal property.
- (2) The number of new full-time equivalent jobs created.
- (3) The average wage of the new employees compared to the state minimum wage.
- (4) The infrastructure requirements for the taxpayer's investment.



Abatement Schedule IC 6-1.1-12.1-17

NEW LANGUAGE - (b) For a statement of benefits (Form SB-1) approved after June 30, 2013, the designating body shall establish an abatement schedule for each deduction. An abatement schedule may not exceed ten (10) years.



Abatement Schedule IC 6-1.1-12.1-17

NEW LANGUAGE (c.) For a statement of benefits (Form SB-1) approved before July 1, 2013, the abatement schedule approved for that particular taxpayer remains in effect until the terms of the resolution or Form SB-1 expire.



Establishing An ERA

- Establish geographical area by:
- Designating body makes a determination.
 - Prepares maps and plats that identify the area.
 - Prepares a simplified description of property boundaries.
- Passes a preliminary resolution.
- After approving a preliminary resolution, designating body publishes a notice of adoption and substance of resolution.



Establishing An ERA

- The designating body's final action is to determine whether the qualifications for an ERA are met and to confirm, modify or rescind the preliminary resolution.
- If confirmed, a confirmatory resolution is passed.
- Minutes to a council meeting do not qualify as a resolution.



Resolution

- According to IC 6-1.1-12.1-2.5, the resolution declares an area as an economic revitalization area.
- The resolution specifies the abatement schedule.
- The resolution could contain an expiration date when the designation ceases to exist or other limitations or conditions.



Resolution

- If there is an expiration date of the ERA designation, it is simply the window of opportunity in which a company can install new abatable equipment and receive a deduction.
- This expiration date can easily be extended or renewed.



Frequently Asked Questions

Question: If an ERA designation expires after two years on a 10-year abatement, would the deduction stop after two years?

Answer: No, anything that qualified during that two-year period would receive the full ten-year abatement.



Abatement Fee (Optional)

- Authority to impose fee given to any designating body within the State of Indiana who has the power to grant an abatement.
- The amount of the fee is set by the designating body and the property owner.
- The fee is calculated by the county auditor and paid to the county treasurer.
- See IC 6-1.1-12.1-14



Unauthorized Facilities IC 6-1.1-12.1-3 (e)

- The following facilities are not authorized to receive a deduction:
- Golf courses; country clubs; massage parlors; tennis clubs; skating facilities; handball or racquetball facilities; hot tub facilities; suntan facilities; racetracks; any facility that has a primary purpose of retail food and beverage, automobile sales and service, or other retail unless...



Unauthorized Facilities IC 6-1.1-12.1-3 (e)

- ...unless an economic development target area is established. (IC 6-1.1-12.1-7)
- Residential facilities may not be approved unless it is multifamily of which at least 20% of the units are for low – moderate income individuals OR is in an economic development target area OR is designated as a residentially distressed area.
- Or a package liquor store.



Filing Requirements for Taxpayers on Tax Abatements

Filing Requirement Basics



Self Assessment System

- Taxpayer is responsible for filing his personal property assessment in a timely manner with the proper assessing official.
- Assessors do not have the authority to file a return for the taxpayer; however, the assessor can assist the taxpayer.
- Taxpayer MUST sign the return.



IC 6-1.1-12.1-5.4

- A person that desires to obtain the deduction must attach a certified deduction schedule (Form 103-ERA) with his/her timely filed personal property return (Form 103-Long) and file it with the proper assessing official.



Compliance with Statement of Benefits (Form CF-1/PP)

- Form CF-1/PP must be filed with the designating body and the assessor of the township where the equipment resides each year a personal property abatement deduction is requested.
- Must be filed between March 1 and May 15 or the approved extension date.



Compliance with Statement of Benefits (Form CF-1/PP)

- Compliance information for multiple projects may be consolidated on one Form CF-1/PP with approval of the designating body.
- The taxpayer attaches an approved copy of Form CF-1/PP to his return.
- Page 1 is signed by taxpayer.
- Page 2 is completed by the designating body.
(Is the taxpayer in compliance?)



Compliance with Statement of Benefits (Form CF-1/PP)

- The major difference between the Form SB-1/PP and the Form CF-1/PP is that one is an estimate of the project before it begins and the other is a summary of the actual information after the project has been completed.
- The Form SB-1/PP structures the deduction and the Form CF-1/PP is used to request & approve the deduction.



Frequently Asked Questions

Question: Should the Form CF-1 be approved by the designating body before it is filed with the personal property tax return or before the real property deduction is allowed?



Frequently Asked Questions

Answer: IC 6-1.1-12.1-5.9 (b) states that the designating body MAY determine whether the property owner is in substantial compliance within 45 days of receiving the form so it is possible that the Form CF-1 is never reviewed and signed by the designating body.



Frequently Asked Questions

Question: If a Form CF-1 is not filed by the taxpayer, who makes the decision that they are not in compliance...the county auditor for real property / the county assessor for personal property or the designating body?



Frequently Asked Questions

Answer: There are two types of compliance with this question. The statutory requirement to submit the CF-1 and the process of approving the CF-1 once received. The auditor/assessor has the authority to deny an abatement that is not in compliance with the statute and the designating body has the authority to approve or disapprove the CF-1 once received.



The Abatement Calendar



Timetable for Personal Property

- The taxpayer files the tax return & supporting schedules by May 15 or the extended due date.
- The township assessor, if any, has until September 15 or 4 months from the extended due date to review the tax return.



Request for Extension IC 6-1.1-3-7

- A taxpayer may request up to a thirty (30) day extension to file his tax return by filing a written request prior to the filing date.
- Assessors may grant, deny, or give a partial extension at their discretion with a written reply.



Timetable for Personal Property

- The county assessor or the county board of appeals (PTABOA) have until October 30 or 5 months to review the entire return (assessment & deduction).
- Taxpayer has twelve months from the filing date or the extended due date to amend the return.



Amended Returns

- IC 6-1.1-3-7.5
- The return is filed by the taxpayer.
- The taxpayer files an amended return by writing AMENDED on the top of a standard blank return.



Amended Return Deadlines

- May 15 of the following year, if no extension was granted.
- Up to June 14 of the following year or 12 months from original return's extended due date, if an extension was granted.



Amended Returns

- Taxpayer may claim any deduction or exemption that could have been claimed on the original return.
- Taxpayer may only amend the original return one time. You can not amend an amended return.



Original Return Defined 50 IAC 4.2-1-1.1(k)

- Original personal property return is the personal property tax return filed with the proper assessing official by May 15, or if an extension is granted, the extended filing date.
- An original return must be filed timely in order to be eligible to be amended.



Amended Returns

- A timely filed, amended return becomes the taxpayer's assessment of record. The township assessor has 4 months and the county assessor or PTABOA has 5 months from date that the amended return was filed to review it and make changes to the amended assessment. Any change to this assessment would require notification with a Form 113/PP.



IC 6-1.1-12.1-5.4(e)

For Abatement Deductions:

- The assessing official may review the deduction schedule and has until the next February 28 to deny or alter.
- However, it is recommended to use the four and five month deadlines. Waiting until February 28 could cause problems with tax rates and shortfalls.



IC 6-1.1-16-1

- If the assessing official fails to change an assessment within the time prescribed, the assessed value claimed by the taxpayer is final.



Timeframe for Real Property

- The Form 322/RE must be filed with the county auditor before May 10 or within 30 days of the mailing date of the Form 11 if mailed after April 10. IC 6-1.1-12.1-5



Frequently Asked Questions

Question: What if no Form 11 is given?

Answer: IC 6-1.1-15-13 says that if no Form 11 is sent, the tax bill would then serve as first notice so the taxpayer would have 30 days after receiving the tax bill to file the Form 322/RE.



Frequently Asked Questions

Answer: (cont.)

This means that the deduction would be given after budgets were approved and tax rates were set so if it was a sizable deduction, there could be issues with shortfalls (or a loss of revenue to the local units).



Verification of Personal Property Tax Abatements



IC 6-1.1-3-14

- The township or county assessor shall examine and verify the accuracy of personal property tax returns.



IC 6-1.1-12.1-5.4

- The assessor may approve, deny or alter the amount of the deduction.
- The assessor shall notify the taxpayer of any changes made in the deduction amount on Form 113/PP which allows the taxpayer to challenge the change if desired.



Form 103-ERA

- Schedule of Deduction from Assessed Valuation
- Required to be filed each year a deduction is desired even if no new abatable equipment is installed in that assessment year.
- Form must be filed with the assessing official of the county in which the abatable equipment is located.



Equipment List (Form 103 EL)

- The list should be itemized and contain installation dates and cost.
- An equipment list is only needed for equipment installed since the last assessment date. (The first year that it qualifies for the deduction.)
- Assessors questioning abatements on older equipment should refer to that particular return and that list.



Equipment List (Form 103-EL)

- The assessor should verify that all of the equipment listed qualifies for a personal property abatement and deduct any non-qualifying equipment from the list.
- Any changes to the assessment or the deduction require notification to the taxpayer on a Form 113/PP. (IC 6-1.1-3-20)



Confidential information

- IC 6-1.1-35-9 affects:
- All assessing officials, employees, and anyone under contract to any assessing official.
- All information that is related to earnings, income, profits, losses, or expenditures.
- Disclosure of confidential information can carry severe penalties.
- What's public information? Assessed Value



Supplements to Form 103-Long

- Any supplemental information or forms attached to Form 103-Long that support the return are subject to same confidential standard as that for Form 103-Long.



Maintenance of Records

- County auditor shall maintain real property abatement records.
- The assessing officials are responsible for the maintenance of the personal property abatement records. (IC 6-1.1-3-21)



Solving Problems That May Arise



Incomplete Filing

- What if the filing is not complete? For example, what if the Form SB-1 or CF-1 is missing?
- The assessor or the auditor could deny it or could send a request for the information and give 10 days to provide it. If not received, the claim for the deduction could then be denied.



Late Filing

- IC 6-1.1-12.1-5.4 states the taxpayer must file a certified deduction schedule with a timely personal property return if they wish to receive an abatement.
- A return filed late which includes a Form 103-ERA should have the deduction denied immediately.



Waiver of Noncompliance

- The taxpayer could accept the loss of Year #1 of the abatement and claim it for Year #2 through the remainder of the abatement's term or...
- The taxpayer could request a waiver of non-compliance through the designating body in order to forgive the mistake.



Waiver of Noncompliance

- If the designating body wishes to waive non-compliance, they shall conduct a public hearing and then may adopt a resolution.
IC 6-1.1-12.1-11.3
- The decision to grant, deny, or partially grant a waiver of non-compliance rests on the shoulders of the designating body.



Waiver of Noncompliance

- IC 6-1.1-12.1-11.3 covers:
- Failure to submit the Form SB-1 to the designating body before the hearing.
- Failure to submit the Form SB-1 to the designating body before the project begins.
- Failure to designate the ERA zone before the project begins.



Waiver of Noncompliance

- IC 6-1.1-12.1-11.3 covers:
- Failure to make the required findings of fact before designating the area.
- Failure to file a timely application.
- Failure to file a complete application.
- NOTE: It does not give the designating body the authority to grant abatements on assets that don't qualify.



Waiver of Noncompliance

- IC 6-1.1-12.1-9.5 covers:
- Correction of clerical errors such as mathematical errors or omitted signatures.
- The adoption of a waiver of non-compliance resolution is the remedy to correct these issues as well.



Frequently Asked Questions

Question: If the taxpayer fails to claim an abatement for the first three years of the ten year abatement cycle, could we begin the first year of the abatement cycle in the equipment's fourth year?



Frequently Asked Questions

Answer: No, the tax abatement cycle begins when the equipment is installed and ready for use. In this example, the taxpayer can claim the abatement in the fourth year of the ten year cycle or request a waiver of non-compliance from the designating body for the past unclaimed deductions.



Frequently Asked Questions

Answer: The same theory would apply to real property. The tax abatement cycle begins when the new structure or rehabilitation of real property is first assessed.



Frequently Asked Questions

Question: But won't granting a waiver of non-compliance on unclaimed deductions create shortfalls?

Answer: Yes, most likely shortfalls in the budget could be created so the designating body should consider the facts and their options before making a decision.



An Unclaimed Deduction, Waivers, & Amended Returns

When a taxpayer fails to claim the abatement deduction on his timely filed return, he may request a Waiver of Non-Compliance hearing after he receives his tax bill.

To grant the waiver could mean a shortfall to the local units of government; however the designating body may feel that the taxpayer deserves the deduction.



An Unclaimed Deduction, Waivers, & Amended Returns

If the waiver is granted, an amended return could be filed to claim the deduction.

IC 6-1.1-3-7.5(f) states that if a taxpayer files an amended return after July 15 of that year, he shall pay taxes based on the assessed value of the original return with credits being applied to future tax bills.

This statute could eliminate the shortfall while still allowing the tax savings.



Local Control

There are many scenarios when it comes to dealing with tax abatement issues.

The facts for each situation will need to be reviewed and discussed by the designating body who have the option of getting legal advice from their attorney.

Tax abatements are given locally and local control prevails when resolving these issues.



Real Property Abatements

- While this presentation focused on personal property abatements, a great deal of the process discussed applies to real property abatements as well.
- The designating body will establish an ERA.
- The Form SB-1/Real Property, a resolution, & Form CF-1/Real Property will need to be completed.



Real Property Abatements

- A timely deduction application will have to be filed in order to receive the deduction.
(Form 322/RE)
- Just as the county assessor has the authority to approve, deny, or alter a personal property abatement deduction, the county auditor has the authority to approve, deny, or alter a real property abatement deduction.



Real Property Abatements

- The main differences between the real property abatement process and the personal property process are:
 - Self Assessment (PP) versus the assessor generating the assessed value that the auditor applies the deduction to the real property.
 - Annual filing for the deduction by the taxpayer (PP) versus a single filing for the improvements for that assessment date on real property.



Real Property Abatements

- Eligible property includes construction of new structures, additions to existing structures, or betterments to existing structures if it increases the assessed value.
- Taxpayers need to understand that their real property abatement will be based on the increase to their assessed value and not the actual cost per books for their building project.



Frequently Asked Questions

Question: What if I invest money in repairs to the building and the assessor determines that the assessed value should not increase because of it?

Answer: The abatement deduction is based on the increase in assessed value so if there is no increase, there could be no deduction.



Real Property Abatements

- The annual recalculation of the deduction is done by the taxpayer for personal property while the assessor & the auditor work together to calculate the deduction for real property. This can become quite complex with layers of abatements (multi-year projects built in phases) combined with annual adjustments and general reassessments.



Real Property Abatements

- The taxpayer has appeal rights if there are questions concerning the correct deduction amount. IC 6-1.1-12.1-5(j)
- The designating body can consider adopting a waiver of non-compliance resolution to resolve certain issues while other issues are not covered under those provisions and would have to be addressed through the appeals process.



Abatements Versus Tax Caps

Question: Is it possible that the Constitutional tax cap could override the tax abatement deduction on a company's tax bill?

Answer: Yes, the calculation of the tax cap on the tax bill is separate from the calculation of the assessed value less any deductions on the tax bill. The amount actually due on the tax bill reflects the lesser of these two numbers.



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